



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 228**

**[EPA-R06-OW-2014-0234; FRL-9914-59-Region 6]**

### **Ocean Dumping: Cancellation and Modification of Final Site Designations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today cancels the final designation of two Ocean Dredged Material Disposal Sites (ODMDSs) located in the Gulf of Mexico near the Houma Navigational Canal (HNC) and near the Mississippi River Gulf Outlet (MRGO) Canal, Louisiana. Both sites are EPA-approved ocean dumping sites for the disposal of suitable dredged material. This final action is being taken because there is no clear future need for the sites. Additionally, EPA is modifying the period of use, use restriction, and name of the Homeport Project ODMDS located in the Gulf of Mexico offshore of Port Aransas, Texas.

**DATES:** This Final Rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** The EPA established a docket for this action under Docket No. EPA-R06-OW-2014-0234. All documents in the docket are listed on the <http://www.regulations.gov> website. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

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**I. Potentially Affected Persons**

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Final Rule would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Terrebonne, Louisiana, the Mississippi River Gulf Outlet Canal, Louisiana, and Corpus Christi, Texas. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites offshore Terrebonne, Louisiana, the Mississippi River Gulf Outlet Canal, Louisiana, and Corpus Christi, Texas would be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government .....	USACE Civil Works and O & M projects; other Federal agencies, including the Department of Defense.
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal	

governments .....	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects
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This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These cancellations and modification are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, §228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made by promulgation in this part 228. These site cancellations and modification of types of wastes permitted to be discharged to a specific disposal site are being published as final rulemaking in accordance with § 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from

use or changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site based upon changed circumstances concerning use of the site.

### **III. Final Action**

The final cancellation of the designations of these sites is needed as a housekeeping measure. In essence, these ODMDSs either are no longer a suitable disposal option or have no foreseeable need. The Houma ODMDS is now partially occupied by the Houma Navigational Canal. The U. S. Corps of Engineers has re-aligned the Cat Island Pass portion of the HNC several times since the construction of this federal navigation channel in order to retain a channel segment that requires little maintenance dredging due to the natural hydrodynamics in the vicinity. This particular portion of the HNC Cat Island Pass channel is characterized by an area of deeper water (erosional zone) that is moving westwards. Once this deeper water erosional zone has moved far enough west from the Corps' channel alignment that area of the channel begins to shoal (becomes a depositional zone). To avoid increased maintenance dredging costs, the Corps re-aligns this portion of the channel westwards to "keep up" with the deeper water zone as it continues to migrate westwards. The Houma ODMDS is located on the west side of this channel, and the deeper water zone has migrated into the ODMDS boundaries. The Houma ODMDS has not been used for more than twenty (20) years. Instead, dredged material from the HNC has been used beneficially under section 404 of the Clean Water Act on the two (2) single point discharge (SPD) sites located within the ODMDS. It is the Corps intention to continue this practice. As such, this type of placement is excluded by definition from regulation by MPRSA. De-designation of the Houma ODMDS will allow the Corps to expand the beneficial use of dredged material for the creation of durable islands for seasonal bird nesting areas regulated under section 404 of the Clean Water Act.

The Mississippi River-Gulf Outlet (MRGO) ODMDS is no longer needed. On June 5, 2008 the Assistant Secretary of the Army for Civil Works forwarded the Final MRGO Deep-Draft De-authorization Report to Congress officially de-authorizing the MRGO from the Gulf Intercoastal Water Way (GIWW) to the Gulf of Mexico as a federal navigation project. The report also authorized the construction of a rock closure structure across MRGO which was completed in late July 2009.

The modification of the period of use and use restriction on the Homeport Project ODMDS is needed to change the use of the site to include suitable dredged material from the greater Corpus Christi, Texas vicinity over an indefinite period of time. The Homeport Project ODMDS was designated to provide a disposal area for placement of suitable construction dredge material from the U.S. Navy's Homeport Project at Corpus Christi/Ingleside, Texas. The Homeport Project never materialized and therefore, the ODMDS was never used. Use of the ODMDS was limited to suitable dredged material from the Homeport Project over a 50 year period. There is a need for placement of construction dredged material from the Corpus Christi Channel Channel Improvement Project (CIP) as described in the Final Environmental Impact Statement (FEIS) for the Corpus Christi Ship Channel Channel Improvements Project Corpus Christi and Nueces Bays Nueces and San Patricio Counties, Texas published in April 2003. Based on the FEIS, suitable dredged material will be placed beneficially in the location of the Homeport Project ODMDS under section 404 of the Clean Water Act (CWA). CWA section 404 has jurisdiction in the Territorial Sea or coastal waters from the baseline to three (3) nautical miles seaward. Because the Homeport Project ODMDS is located beyond the boundary of the Territorial Sea and in the open ocean, the CWA section 404 does not have jurisdiction. As a result there is a need to change the use restriction placed on the Homeport Project ODMDS to include suitable dredged

material from the greater Corpus Christi, Texas vicinity. Since dredged material placement at this ODMDS is expected to be an on-going process over many years, the period of use is being changed to continuing use. EPA is also changing the name of the Homeport Project ODMDS to Corpus Christi New Work ODMDS. The current name is no longer applicable since it was the name of the project at the time the ODMDS was designated.

#### **IV. Responses to Comments**

The proposed rule was published in the **Federal Register** on April 21, 2014, as docket number EPA-R06-OW-2014-0234. The comment period closed on June 5, 2014. The EPA received two comments on the proposed rule from two entities. These comments are responded to here.

##### **1. Request for Geographic Coordinates**

*NOAA asked for the geographic coordinates for the two ODMDS being cancelled.*

The Houma Navigation Channel ODMDS is bounded by the following coordinates (North American Datum from 1927): 29°05'22.3"N., 90°34'43"W.; 29°02'17.8"N., 90°34'28.4"W.; 29°02'12.6"N., 90°35'27.8"W.; 29°05'30.8"N., 90°35'27.8"W.

The Mississippi River Gulf Outlet ODMDS is bounded by the following coordinates (North American Datum from 1927): 29°32'35"N., 89°12'38"W.; 29°29'21"N., 89°08'00"W.; 29°24'51"N., 88°59'23"W.; 29°24'28"N., 88°59'39"W.; 29°28'59"N., 89°08'19"W.; 29°32'15"N., 89°12'57"W.

##### **2. Comment Regarding NHPA Section 106 Consultation**

*The Choctaw Nation of Oklahoma requested to be a consulting party under Section 106 of the National Historic Preservation Act for the portion of the project in Louisiana under Section 106.*

The cancellation of the Houma ODMDS and Mississippi River Gulf Outlet ODMDS do not have the potential to effect historic resources listed on or eligible for listing on the National Register. Cancellation of these sites by this Notice does not authorize any action or ground disturbance

activities which would have the potential to effect resources. Therefore, Section 106 review is not necessary for this action.

## **V. Administrative Review**

### **1. Executive Order 12866**

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ‘significant,’ and therefore subject to office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to lead to a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof: or
- (d) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This final rule should have minimal impact on State, local, or Tribal governments or communities. Consequently, EPA has determined that this final rule is not a “significant regulatory action” under the terms of Executive Order 12866.

### **2. Paperwork Reduction Act**



The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the final rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

### **3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996**

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This final rule will not impose any requirements on small entities. The modification of the Homeport Project ODMDS broadens the use of the site providing an additional option for dredged material placement in the Corpus Christi, Texas vicinity. The removal of the Houma ODMDS will allow for the beneficial use of dredged material under CWA Section 404 for the creation of bird islands. The closing of the Mississippi River Gulf Outlet Navigation Channel was mandated by Congress and therefore the associated ODMDS is no longer needed.

For these reasons, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

#### **4. Unfunded Mandates Reform Act**

This final rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of 1995 (Pub. L. 104-4) for State, local, or tribal governments or the private sector that may result in estimated costs of \$100 million or more in any year. It imposes no new enforceable duty on any State, local or tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this final rule.

#### **5. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory *policies that have federalism implications*. “*Policies that have federalism implications*” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

#### **6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This final rule does not have Tribal implications, as defined in Executive Order 13175.

#### **7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks**

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have

reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### **8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance with Administrative Procedure Act**

This final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### **9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### **10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations**

Executive Order 12898 (59 FR 7629) directs Federal agencies to determine whether the final rule would have a disproportionate adverse impact on minority or low-income population groups within the project area. The Final Rule would not significantly affect any low-income or minority population.

#### **List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: July 18, 2014.

Samuel Coleman, P.E.,

Deputy Regional Administrator, Region 6.

In consideration of the foregoing, EPA amends part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228— CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR  
OCEAN DUMPING**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by:

- a. Removing and reserving paragraphs (j)(1) and (j)(4);
- b. Revising paragraph (j)(16) introductory text; and
- c. Revising paragraphs (j)(16)(v) and (j)(16)(vi).

The revisions read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(j) \* \* \*

(16) Corpus Christi New Work ODMDS, Corpus Christi, Texas.

\* \* \* \* \*

(v) *Period of Use*: Continuing use.

(vi) *Restrictions*: Disposal shall be limited to suitable dredged material from the greater Corpus Christi, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

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[FR Doc. 2014-18619 Filed 08/05/2014 at 8:45 am; Publication Date: 08/06/2014]